

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

**Civil Writ Petition Nos.1215 of 1995, 850, 992, 1025 and
1662 of 1996.**

Judgment Reserved on:11.04.2007

Date of decision: April 26, 2007.

For title: Please see overleaf

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting ?¹

**For the Petitioner(s): Mr.M.M. Khanna, Senior Advocate
 with Ms.Pushpa Attri, Advocate.**

**For the Respondents: Mr.M.S. Chandel, Advocate General
 with Mr.Rajan Dewan, Additional
 Advocate General.**

Dev Darshan Sud,J.

These writ petitions have been preferred by the petitioner challenging the assessment order passed by the Assessing Authority under the provisions of Section 14(6) of the Himachal Pradesh General Sales Tax Act, 1968.

The petitioner has submitted that the order cannot be sustained and has urged various grounds in support of his petition. For the purposes of the present petition, we are not giving any finding on the points raised by the petitioner as in the present

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

1. **CWP No.1215 of 1995.**

M/s.P.K. Construction Company	Petitioner
Versus	
State of H.P. & Others	Respondents.

2. **CWP No.850 of 1996.**

M/s.Kundan Lal Hari Ram & Company	Petitioner
Versus	
State of H.P. & Others	Respondents.

3. **CWP No.992 of 1996.**

M/s.Kundan Lal Hari Ram & Company	Petitioner
Versus	
State of H.P. & Others	Respondents.

4. **CWP No.1025 of 1996.**

M/s.Kundan Lal Hari Ram & Company	Petitioner
Versus	
State of H.P. & Others	Respondents.

5. **CWP No.1662 of 1996.**

M/s.Habbibulah & Company	Petitioner
Versus	
State of H.P. & Others	Respondents.

For the Petitioner(s): **Mr.M.M. Khanna, Senior
Advocate with Ms.Pushpa
Attri, Advocate.**

For the Respondents: **Mr.M.S. Chandel, Advocate
General with Mr.Rajan Dewan,
Additional Advocate General.**

facts and circumstances the matter requires to be remanded for decision afresh by the Assessing Authority.

While framing the assessment, the Assessing Authority has held the petitioner liable for payment of taxes for the year 1989-90, 1990-91 and 1991-92. Learned Senior Counsel appearing for the petitioner submits that no liability can be attributed to the petitioner as he was not a dealer and the transactions were not exigible to tax for this period. Learned counsel has cited various decisions in support of his contention. According to him, the petitioner had submitted detailed reply to the Assessing Authority the grounds on which liability to pay taxes was not attracted, including the ground that the provisions of the Act were not applicable to the petitioner as he was not a dealer for the years under consideration. He drew our attention to the reply filed to the notice sent to the petitioner which is on the record of the case. On going through the reply, we find that as a fact, the question regarding the applicability of the Act and its retrospective operation as sought to be given by the Assessing Authority had been challenged by the petitioner. We also find that a number of other grounds have been raised by the petitioner which have not been decided in the assessment order.

Learned counsel has drawn our attention to a judgment of the Hon'ble Supreme Court in ***Sedco Forex International Drill.Inc. and Others vs. Commissioner of Income Tax, Dehradun and another, (2005) 12 SCC 717***, in support of his submission that the taxing statute cannot be construed to have retrospective effect unless specifically provided for which the legislature intent must be clearly manifested. There is no dispute so far as this proposition is concerned. Learned counsel also drew our attention to a number of grounds which would exempt the petitioner from the ambit of the Act.

Since we are remanding the matter to the Assessing Authority, we are not expressing our opinion on any of the grounds raised by the petitioner. Suffice it to say that it is trite to observe that an assessment order should contain reasons and should deal with the objections. It has, by now been well settled by a number of decisions of the Hon'ble Supreme Court. This implies that the objections, if any, which are raised must be decided. It is not merely sufficient to refer to the notice and then go ahead with the assessment. What is required is a decision on the points raised and the reasons for such decisions. A statutory functionary, discharging quasi judicial functions under the Act, is expected to deal with each aspect of the matter

and not to proceed with the assessment in slip shod manner.

In the facts and circumstances, we find that the order of the assessment, which has been passed, lacks reasoning and does not consider the objections raised by the petitioner both in law and on fact. We, therefore quash the assessment order Annexure P-3 and direct that the matter shall be decided afresh by the Assessing Authority after giving the petitioner an opportunity of submitting his objections to the demand notice issued to him. The objections shall be disposed of by a speaking order. In the interregnum, till such decision is taken, no demand will be raised or realized from the petitioner. The writ petition is, accordingly, allowed. There shall be no order as to costs.

(Dev Darshan Sud)
Judge.

April 26, 2007.
(aks)

(Rajiv Sharma)
Judge.